

FILED

MAR 06 2014

SPECIAL ORDINANCE NO. 6, 2014

CITY CLERK

AN ORDINANCE VACATING A PORTION OF A PUBLIC ALLEYWAY LOCATED IN THE CITY OF TERRE HAUTE, VIGO COUNTY, INDIANA.

BE IT ORDAINED by the Common Council of the City of Terre Haute, Indiana:

SECTION 1. Pursuant to the provisions of I.C. 36-7-3-12, it is desired and deemed necessary to vacate a portion of a Public Alleyway located in the City of Terre Haute, Vigo County, Indiana, which is now laid out and existing in the City of Terre Haute, Indiana, and described as follows:

Commencing at the southwest corner of Lot 1 in the North Side Realty & Loan Co.'s Subdivision of Lot 17 in Barbour Place, a subdivision of Section 10, Township 12 North, Range 9 West, lying east of the east line of Garfield Avenue as now established in the City of Terre Haute, Indiana (which corner is also the southeast corner of the 10' wide alley running north from the north right-of-way of Maple Avenue); thence north along the east side of said alley a distance of eighty (80) feet to a cotton gin spindle set on an interim corner of the east boundary line of Lot 3 of said Subdivision--said point being the point of beginning of this parcel; thence east along the boundary of said Lot 3 a distance of 4.68 feet to another interim corner of said Lot 3 (marked by a set cotton gin spindle); thence northeasterly along the eastern boundaries of part of Lot 3 and Lots 4, 5, 6 and 7 of said Subdivision a distance of 126.1 feet to a set cotton gin spindle at an interim corner of Lot 7 in said Subdivision; thence left/NW ninety degrees(90°) a distance of 9 feet; thence left/SW along a line parallel to the eastern boundaries of Lots 7, 6, 5, 4 and part of Lot 3 of said Subdivision a distance over 100 feet to a point that is north of the point of beginning and 9 feet northwesterly of the eastern angled boundary of Lot 3 in said Subdivision; thence south to the point of beginning.

SECTION 2. Be it further ordained that said portion of said public alleyway in the City of Terre Haute, Indiana, above described, be and the same is vacated and will revert to the abutting property, subject to the continuation of any and all existing easement rights for public utilities.

SECTION 3. Be it further ordained that the City Clerk be, and he is hereby directed to furnish a copy of this Ordinance to the Recorder of Vigo County, Indiana, for recording, and to the Auditor of Vigo County, Indiana.

WHEREAS, an emergency exists for the immediate taking effect of this Ordinance, the same shall be in full force and effect from and after its passage by the Common Council of Terre Haute, and its approval by the Mayor and publication as by law provided.

Presented By: Neil Garrison
Neil Garrison, Councilman, Fifth District

Passed in open Council this 15th day of April, 2014.

Amy Auler
Amy Auler, President

ATTEST:

Chuck Hanley, Chuck Hanley, City Clerk

Presented by me to the Mayor this 16th day of April, 2014.

Chuck Hanley
Chuck Hanley, City Clerk

Approved by me, the Mayor, this 16th day of April, 2014.

Duke A. Bennett
Duke Bennett, Mayor

Attest: Chuck Hanley, Chuck Hanley, City Clerk

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required .

William M. Olah
William M. Olah

This instrument prepared by: William M. Olah, Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP, 333 Ohio Street, Terre Haute, IN 47807

PETITION FOR VACATION OF A PORTION OF PUBLIC ALLEY

TO THE PRESIDENT AND MEMBERS OF THE COMMON COUNCIL OF THE CITY OF TERRE HAUTE,
VIGO COUNTY, INDIANA

LADIES AND GENTLEMEN:

TJW, LLC, as the owner of land abutting a certain platted alley, as shown at Plat Record 12, Page 52, recorded April 2, 1921, respectfully petitions and requests the legislative body of the City of Terre Haute, Indiana, to vacate that portion of the platted alley described below pursuant to the provisions of I.C. 36-7-3-12, and in support of this Petition would show to the Common Council of said City as follows:

1. TJW, LLC, Petitioner, is the owner of the following described real estate located in Vigo County, State of Indiana:

Lots Numbered 1, 2, 3, 4, 5, 6 and 7 in North Side Realty and Loan Co's Subdivision of part of Lot 17, in Barbour Place, a subdivision of the South half of Section 10, Township 12 North, Range 9 West, lying East of East line of Garfield Avenue as now established in the City of Terre Haute.

Said real estate is commonly known as 1284/1290 Lafayette Avenue, Terre Haute, Indiana, and is generally bounded as follows:

On the east by Lafayette Avenue
On the south by Maple Avenue
On the west by a 10 ft. wide N-S alley, and by a 25 ft. wide SW/NE alley
On the north by Lot 8 in said Subdivision

That the attached copy of a portion of the January 26, 2001 ALTA/ACSM survey by James D. Myers of Myers Engineering, Inc. highlights in yellow the portion of the public alley which Petitioner seeks to have vacated. Said portion of the public alley to be vacated is a 9 ft. wide strip. The portion of the alleyway to be vacated is described below. Petitioner is the owner of all of the property abutting that portion of the alley to be vacated.

2. The portion of the public alley to be vacated as set forth above may be more particularly described as follows, to-wit:

Commencing at the southwest corner of Lot 1 in the North Side Realty & Loan Co.'s Subdivision of Lot 17 in Barbour Place, a subdivision of Section 10, Township 12 North, Range 9 West, lying east of the east line of Garfield Avenue as now established in the City of Terre Haute, Indiana (which corner is also the southeast corner of the 10' wide alley running north from the north right-of-way of Maple Avenue); thence north along the east side of said alley a distance of eighty (80) feet to a cotton gin spindle set on an interim corner of the east boundary line of Lot 3 of said Subdivision--said point being the point of beginning of this parcel; thence east along the boundary of said Lot 3 a distance of 4.68 feet to another interim corner of said Lot 3 (marked by a set cotton gin spindle); thence northeasterly along the eastern boundaries of part of Lot 3 and Lots 4, 5, 6 and 7 of said Subdivision a distance of 126.1 feet to a set cotton gin spindle at an interim corner of Lot

7 in said Subdivision; thence left/NW ninety degrees(90°) a distance of 9 feet; thence left/SW along a line parallel to the eastern boundaries of Lots 7, 6, 5, 4 and part of Lot 3 of said Subdivision a distance over 120 feet to a point that is north of the point of beginning and 9 feet northwesterly of the eastern angled boundary of Lot 3 in said Subdivision; thence south to the point of beginning.

3. No other landowner adjoins and abuts that portion of the public alley to be vacated, so no landowner other than Petitioner would be adversely affected by the vacation of the same; rather, Petitioner is the owner of all property adjoining and abutting the area to be vacated.

4. Petitioner proposes the vacation of that portion of the public alley because:

- vacating that portion of the alley would not prohibit use of the alley; rather, the alley in question would be narrowed down from 25 feet to 16 feet wide as a result (16 feet being the same width of this same alley as it proceeds north)
- sometime prior to 2001 when The Merchants National Bank of Terre Haute owned the property abutting this alley on its east side, that owner constructed a motor vehicle drive through banking facility with canopy, the northwest corner of which encroached at least 8 feet and 2 inches into this alley (that is, into the portion of the alley here sought to be vacated)
- Petitioner acquired that old bank property and leased it to a tenant who began redeveloping it for use as a restaurant and enclosed the area under the canopy, intending to remodel that drive-through into a kitchen
- the tenant did not discover said pre-2001 encroachment until after the remodel was complete (again, that building encroachment has existed for over 20 years)
- a similar building encroachment, by a different building to the west of the old bank building, into the western leg of this same alley was discovered in 2013 when First Financial Bank, N.A. acquired that other property via foreclosure and then attempted to sell it, and a similar request (Special Ordinance 20, 2013) was granted by this Council and signed by Mayor Bennett to remedy that other building's encroachment
- Should the need arise, emergency and fire vehicles will still be able to safely travel in this alley even after the requested portion of the alley is vacated.

5. The proposed vacation would not hinder the use of the public alley, and all other landowners in the area have, and will continue to have, direct access to the public alley; and as set forth above, the proposed vacation would not make access to any land by any person by means of a public way difficult or inconvenient; nor would said vacation hinder any member of the public's access to a church, school or other public building or place.

6. The name and address of the only owner of land that abuts that portion of said alley proposed to be vacated is:

TJW, LLC
5245 Greywing Court
Terre Haute, IN 47803

WHEREFORE, Petitioner respectfully requests and petitions the Common Council of the City of Terre Haute, Indiana, after hearing on this Petition in accordance with law, to:

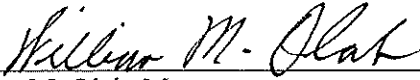
A) Adopt an Ordinance vacating that portion of the public alley referred to and described above;

B) Cause the Clerk of the City of Terre Haute to furnish copies of said Vacation Ordinance to the County Recorder of Vigo County for recording and to the County Auditor, and to thereupon cause the Recorder to release said Ordinance to the Vigo County Area Planning Department for distribution in accordance with paragraph 1125.06 of the City's Zoning Ordinance; and

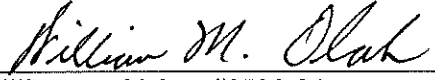
C) For all other proper relief in the premises.

Respectfully Submitted,

TJW, LLC

By: 
William M. Olah, Manager

Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP
333 Ohio Street, Terre Haute, IN 47807
Telephone: (812) 232-4311
Facsimile: (812) 235-5107

By 
William M. Olah #9738-84

AFFIDAVIT

OF

**WILLIAM M. OLAH
MANAGER OF TJW, LLC**

COMES NOW William M. Olah, and affirms under penalties of law that:

1. Affiant is the sole Manager of TJW, LLC, an Indiana limited liability company, and as such, is duly authorized to represent and make this Affidavit for and on behalf of TJW, LLC.

2. TJW, LLC is a limited liability company lawfully organized and existing under the laws of the State of Indiana.

3. In Affiant's capacity as a Manager of TJW, LLC, he is in charge of and is familiar with the properties owned by TJW, LLC. Affiant represents and warrants that TJW, LLC is the owner of record of the following real estate located in Terre Haute, Indiana, to-wit:

1. Parcel Nos. 84-06-10-382-029.000-002
84-06-10-382-028.000-002
84-06-10-382-027.000-002
84-06-10-382-025.000-002

Address: 1284 s/k/a 1290 Lafayette Avenue, Terre Haute, IN
Legal Description:

Lots Numbered 1, 2, 3, 4, 5, 6 and 7 in North Side Realty and Loan Co's Subdivision of part of Lot 17, in Barbour Place, a subdivision of the South half of Section 10, Township 12 North, Range 9 West, lying East of East line of Garfield Avenue as now established in the City of Terre Haute.

Attached hereto is a true and correct copy of the recorded Warranty Deed evidencing such ownership.

I affirm, under penalties for perjury, that the foregoing representations are true.



William M. Olah, Manager of TJW, LLC

STATE OF INDIANA)
 SS:
COUNTY OF VIGO)

Personally appeared before me, a Notary Public in and for said County and State, William M. Olah, Manager of TJW, LLC, the duly authorized representative of said limited liability company, who acknowledges the execution of the above and foregoing Affidavit, after being duly sworn upon his oath and after having read this Affidavit.

WITNESS my hand and notarial seal this 6th day of March, 2014.



KAREN S. MCCAMMON
Notary Public
SEAL
Vigo County, State of Indiana
My Commission Expires August 12, 2015

This instrument prepared by: William M. Olah, Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP, 333 Ohio Street, Terre Haute, IN 47807.

DULY ENTERED FOR TAXATION
Subject to final acceptance for transfer

JUN 27 2013

Timothy M. Spivey
VIGO COUNTY AUDITOR

2013008342 WD \$18.00
06/27/2013 12:08:13P 2 PGS
NANCY S. ALLSUP
VIGO County Recorder IN
Recorded as Presented



WARRANTY DEED

THIS INDENTURE WITNESSETH that Jay E. Jones, a competent adult, ("Grantor"), of Vigo County, in the State of Indiana, conveys and warrants to TJW, LLC, an Indiana limited liability company, ("Grantee"), for good and sufficient consideration the receipt of which is hereby acknowledged any and all interest he may have in the following described Real Estate in Vigo County, State of Indiana, to-wit:

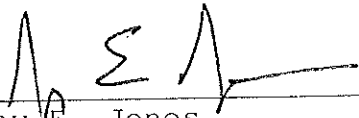
Lots 1, 2, 3, 4, 5, 6 and 7 in the North Side Realty and Loan Co.'s Subdivision of part of Lot 17 in Barbour Place, a Subdivision of the South half of Section 10, Township 12 North, Range 9 West, lying East of East line of Garfield Avenue as now established in the City of Terre Haute in Plat Record 12, Page 52.

Commonly known as 1290 Lafayette Av., Terre Haute, IN

Parcel #'s: 84-06-10-382-029.000-002 and
84-06-10-382-028.000-002 and
84-06-10-382-027.000-002 and
84-06-10-382-025.000-002

Subject to real estate taxes prorated to date of closing.

IN WITNESS WHEREOF, the said Grantor has hereunto set his hand and seal this 27th day of JUNE, 2013.


Jay E. Jones

) SS

)

Witness my hand and notarial seal this 27th day of JUNE, 2013.

JUNE

Printed: William M. Olah
Notary Public, residing in
Vigo County, Indiana

Printed: William M. Olah
Notary Public, residing in
Vigo County, Indiana

8-12-15

William M. Oak

W. M. Olah

Terre Haute, IN 47803

Grantee's Address: 5245 Greywing Ct., Terre Haute, IN 47803

Mail tax statements to: 5245 Greywing Ct., Terre Haute, IN 47803

This instrument prepared by Rhonda D. Oldham, Attorney at Law,
191 Harding Avenue, Terre Haute, IN 47807.



Receipt

The following was paid to the City of Terre Haute, Controller's Office.

Date: March 6, 2014

Name: TJW LLC

Reason: Vacating an Alley \$5.00

TERRE HAUTE, IN
PAID

MAR - 6 2014

Cash: _____

Check: \$5.00 CK# 0087103

CONTROLLER

Credit: _____

Total: \$5.00

Received By: M. Dowell / LE

**CITY CLERK OF TERRE HAUTE
ROOM 102 CITY HALL
TERRE HAUTE, IN 47807
812-232-3375**

To: Street Department, City of Terre Haute

Special Ordinance 6, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

☒ No Problems Noted

☐ Problems as noted below


(Signature)

BRADLEY S. MILLER
(Printed name)

TRANSPORTATION DIRECTOR
(Title)

3/25/14
(Date)

**CITY CLERK OF TERRE HAUTE
ROOM 102 CITY HALL
TERRE HAUTE, IN 47807
812-232-3375**

To: **TERRE HAUTE CITY POLICE DEPARTMENT**

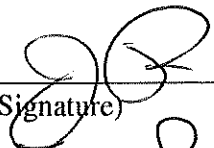
Special Ordinance 6, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

X No Problems Noted

 Problems as noted below


(Signature)
JOHN PUSSE
(Printed name)

CHIEF OF POLICE
(Title)
3.21.14
(Date)

**CITY CLERK OF TERRE HAUTE
ROOM 102 CITY HALL
TERRE HAUTE, IN 47807
812-232-3375**

To: **TERRE HAUTE FIRE DEPARTMENT**

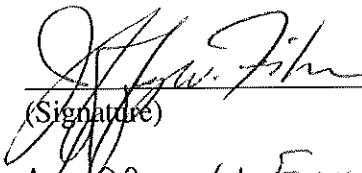
Special Ordinance 6, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

X No Problems Noted

_____ Problems as noted below


(Signature)
JEFFERY W. FISHER
(Printed name)

FIRE CHIEF
(Title)
3-20-14
(Date)

***CITY CLERK OF TERRE HAUTE
ROOM 102 CITY HALL
TERRE HAUTE, IN 47807
812-232-3375***

To: **Engineering Department, City of Terre Haute**

Special Ordinance 6, 2014

March 18, 2014

In accordance with General Ordinance 7, 1990, the City Clerk's Office must poll various departments in regard to the closing of a street or alley. Please review the attached ordinance and indicate any problems you see with the proposed closing. If there are any problems, please write in the space below. Return to the City Clerk's Office by April 4, 2014.

X No Problems Noted

_____ Problems as noted below

Marcus E. Maurer
(Signature)

Marcus E. Maurer
(Printed name)

Staff Engineer
(Title)

3/19/2014
(Date)

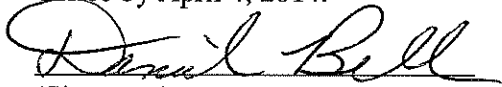
**CITY CLERK OF TERRE HAUTE
ROOM 102 CITY HALL
TERRE HAUTE, IN 47807
812-232-3375**

To: **Building Inspector, City of Terre Haute**

Special Ordinance 6, 2014

March 18, 2014

The street/alley as noted on attached ordinance needs posting at least ten (10) days prior to passage of ordinance. Please indicate posting date and return to the City Clerk's Office by April 4, 2014.


(Signature)

Daniel Bell
(Printed name)

Lead Inspector
(Title)

3-20-2014
(Date Posted)